



December 23, 2009

**TO: Co-chairpersons Senator Dr. Seng and Representative Lykam,
Members of the Care of Animals in Commercial Enterprises Study
Committee**

FROM: Doug Adkisson, Senior Legal Counsel, Legislative Services Agency

**RE: Research Request — The Colorado Pet Animal Care and Facilities
Act (PACFA) Comparison with Iowa's Animal Welfare Act (IWA)**

I. Introduction

In 2009, the Legislative Council established a special interim committee, the Care of Animals in Commercial Enterprises Study Committee, to consider issues regarding the care of dogs, cats, and companion animals in nonagricultural commercial establishments. The Committee met on September 29, 2009. Following the conclusion of testimony, the Committee directed the Legislative Services Agency to research provisions in Colorado statutes that address issues discussed by the Committee during its meeting, and report the results of that research to the Committee. This memorandum is in response to that direction.

This memorandum includes numerous references to Colorado and Iowa law and regulations. The references are current through November 2009 and references to the Colorado Revised Statutes and Iowa Code incorporate the laws both states enacted during their 2009 regular legislative sessions. Both states have made their legal documents publicly available on the Internet. The Internet sources for the documents are as follows:

Colorado Revised Statutes:

<http://www.michie.com/colorado/lpext.dll?f=templates&fn=main-h.htm&cp=>

Colorado Session Laws:

http://www.state.co.us/gov_dir/leg_dir/olls/sl1994/sl_229.htm

Code of Colorado Regulations pertaining to the Pet Animal Care and Facilities Act (Colorado Secretary of State Website):

<http://www.sos.state.co.us/CCR/NumericalSubDocList.do?deptID=1&deptName=1200 Agriculture, Department of&agencyID=9&agencyName=1201 Animal Industry Division&ccrDocID=2515&ccrDocName=8 CCR 1201-11 RULES AND REGULATIONS PERTAINING TO THE ADMINISTRATION AND ENFORCEMENT OF THE PET ANIMAL CARE AND FACILITIES ACT>

Iowa Code:

<http://coolice.legis.state.ia.us/Cool-ICE/default.asp?category=billinfo&service=iowaCode&ga=83>

Iowa Legislation:

<http://contentdm.legis.state.ia.us/cdm4/search.php>

Iowa Regulations (Iowa Administrative Code):

<http://search.legis.state.ia.us/nxt/gateway.dll/ar/iac?f=templates&fn=default.htm>

II. Results of the Research

A. General

1. **PACFA.** Colorado's animal welfare law (codified in Colorado Revised Statutes Article 35-80) regulating the care of pet animal facilities is referred to as the "Pet Animal Care and Facilities Act" (herein referred to as "PACFA" or "Article").¹ The Article was originally enacted in 1994 and took effect on July 1st of that year.² It is scheduled to be repealed on July 1, 2014,³ according to general state program review and sunset provisions.⁴ The Colorado Department of Agriculture has adopted rules required to carry out the statute.⁵
2. **IWA.** Iowa's Animal Welfare Act (herein referred to as IWA) was enacted in 1974 in House File 550⁶ and codified in its present Iowa Code Chapter 162 in 1975, and has not been significantly amended since that time. According to the bill's explanation, the Act is based on model legislation proposed by the United States Animal Health Association.⁷ The Department of Agriculture and Land Stewardship (herein referred to as DALs) has adopted rules required to carry out the statute.⁸

B. Administration

1. **PACFA.** Article 35-80 is administered by the Colorado Department of Agriculture. The Article also establishes a Pet Animal Advisory Committee to assist the department in administering its provisions. The committee consists of a number of persons representing animal rescue organizations, small and large scale animal breeders, boarding kennels, dog day cares, pet groomers, pet animal wholesalers, pet animal retailers, animal control officers, animal shelters, veterinarians, and the public.⁹ The department is authorized to adopt rules to administer the article.¹⁰

¹ Colo. Rev. Stat. § 35-80-101.

² 1994 Colo. Sess. Laws, ch. 229, available at: http://www.state.co.us/gov_dir/leg_dir/olls/sl1994/sl_229.htm (last visited December 4, 2009).

³ Colo. Rev. Stat. § 35-80-117(1).

⁴ See Colo. Rev. Stat. § 24-34-104.

⁵ 8 CCR 1201-11.

⁶ 1974 Iowa Acts ch. 1148.

⁷ For the association's website, see: <http://www.usaha.org/>.

⁸ Iowa Administrative Code 21 ch. 67.

⁹ Colo. Rev. Stat. § 35-80-115.

¹⁰ Colo. Rev. Stat. § 35-80-109(2).

2. **IWA.** Code Chapter 162 is administered by DALIS under its Animal Industry Bureau.¹¹ The department is authorized to adopt rules to administer the chapter so long as the department does not exceed federal standards or rules except as specifically provided for in the Act.¹²

C. Scope

1. **PACFA.** Article 35-80 applies to pet animal facilities. A "pet animal" includes any species of wild or domestic or hybrid animal kept as a household pet, and specifically includes dogs, cats, rabbits, guinea pigs, hamsters, mice, rats, gerbils, ferrets, birds, fish, reptiles, amphibians, and invertebrates.¹³ A pet animal facility is a place used for keeping pet animals for the purpose of adoption, breeding, boarding, grooming, handling, selling, sheltering, trading, or transfer (but does not include a common carrier).¹⁴ The Article expressly regulates dog breeding operations engaged in breeding and raising dogs for sale.¹⁵
2. **IWA.** Code Chapter 162 limits the scope of animals subject to regulation. For almost all purposes Code Chapter 162 protects animals which are either dogs or cats.¹⁶ However, Code Chapter 162 does recognize that pounds keep other animals and covers "vertebrate animals" kept by a pet shop, and specifically dogs, cats, rabbits, rodents, nonhuman primates, birds, and fish.¹⁷ Code Chapter 162 regulates the treatment of dogs and cats by a person classified as a boarding kennel or commercial kennel, commercial breeder, dealer, public auction, pet shop, pound, animal shelter, or research facility.¹⁸

D. Exceptions

1. **PACFA.** Article 35-80 provides a number of exceptions from the Article's applicability. It does not apply to livestock.¹⁹ It does not apply to a number of persons because of their special status, including, veterinary hospitals;²⁰ research facilities, circuses, or publicly or privately owned zoos licensed or registered under the provisions of the federal "Animal Welfare Act of 1970";²¹ hobby breeder facilities (e.g., a canine hobby breeder who does not transfer more than 24 dogs or breed more than two litters per year);²² pet animal training facilities;²³ and greyhound racing facilities.²⁴

¹¹ Iowa Administrative Code 21 ch. 1.2(1)(b). For DALIS website, see: <http://www.agriculture.state.ia.us/animalIndustry.asp>.

¹² Iowa Code § 162.16.

¹³ Colo. Rev. Stat. § 35-80-102(10).

¹⁴ Colo. Rev. Stat. § 35-80-102(11).

¹⁵ See Colo. Rev. Stat. § 35-80-102(6.5).

¹⁶ Code Supplement § 162.1(1) and Iowa Administrative Code 21 ch. 67.1. See Code Supplement §§ 162.2(3) (defining "animal shelter"), 162.2(5) (defining "boarding kennel"), 162.2(6) (defining "commercial breeder"), 162.2(7) (defining "commercial kennel"), 162.2(8) (defining "dealer"), 162.2(13) (defining "public auction"), 162.2(15), (defining "pound"), and 162.2(16) (defining "research facility") providing for narrow scope. Compare with Code Supplement §§ 162.2(13) (defining "pound") and 162.2(13) (defining "pet shop") providing for a broad scope.

¹⁷ Iowa Code §§ 162.1(1), 162.2(12), 162.2(17).

¹⁸ See Iowa Code §§ 162.3 (certification of pounds), 162.4 (certification of animal shelters), 162.5 (certification of pet shops), 162.6 (licensure or certification of commercial kennels or public auctions), 162.7 (licensure or certification of dealers), 162.8 (licensure or certification of commercial breeders), 162.9 (licensure of boarding kennels), and 162.10 (certification of research facilities).

¹⁹ Colo. Rev. Stat. § 35-80-103(2)(h).

²⁰ Colo. Rev. Stat. § 35-80-103(2)(a).

²¹ Colo. Rev. Stat. § 35-80-103(2)(b). See also 7 U.S.C. § 2131 et seq.

²² Colo. Rev. Stat. § 35-80-103(2)(c). See also Colo. Rev. Stat. § 35-80-101(2).

²³ Colo. Rev. Stat. § 35-80-103(2)(d).

2. **IWA.** Code Chapter 162 does not regulate persons who conduct operations on a wholesale basis.²⁵ The chapter does not regulate livestock.²⁶ The chapter expressly carves out several exempted classes of persons from regulation based on either status or the issuance of a federal license. Classes exempt due to status include veterinary hospitals,²⁷ small commercial breeders,²⁸ noncommercial kennels,²⁹ and small pet shops.³⁰ The chapter also does not apply to a person who has been issued a federal license under the "Animal Welfare Act" so long as DALs has issued the person a state certificate of registration.³¹

E. Standards of Care

1. **PACFA.** Article 35-80 authorizes the Colorado Department of Agriculture to provide minimum standards of care applicable to an establishment (including regulating sanitation, ventilation, heating, cooling, humidity, and spatial and enclosure requirements) and to pet animals (regulating nutrition, humane care, medical treatment, sterilization of dogs and cats released to prospective owners from animal shelters and pet animal rescues, and minimum holding periods for and disposition of stray or abandoned pet animals).³² The standards of care for licensees include separate requirements for retail and wholesale pet animal dealerships,³³ dog breeder facilities,³⁴ bird breeder facilities,³⁵ cat breeder facilities,³⁶ pet grooming facilities,³⁷ pet animal boarding and/or training facilities,³⁸ animal rescue facilities,³⁹ animal shelters,⁴⁰ small animal breeder

²⁴ Colo. Rev. Stat. § 35-80-103(2)(f).

²⁵ DALs administers and enforces state regulations applicable to retail establishments and USDA administers and enforces federal regulations applicable to wholesale establishments.

²⁶ See Iowa Code § 162.17.

²⁷ Iowa Code § 162.11(4).

²⁸ Iowa Code §§ 162.2(6), 162.8. Under Iowa Code § 162.2(6), a person who breeds or keeps more than three breeding greyhounds for purposes of pari-mutuel racing but does not sell them is still considered a commercial breeder.

²⁹ Iowa Code § 162.11(5).

³⁰ Iowa Code §§ 162.2(12), 162.5.

³¹ Iowa Code § 162.11(2).

³² Colo. Rev. Stat. § 35-80-109(2).

³³ 8 CCR 1201-11(11.00).

³⁴ 8 CCR 1201-11(12.00).

³⁵ 8 CCR 1201-11(13.00).

³⁶ 8 CCR 1201-11(14.00).

³⁷ 8 CCR 1201-11(15.00).

³⁸ 8 CCR 1201-11(16.00).

³⁹ 8 CCR 1201-11(17.00).

⁴⁰ 8 CCR 1201-11(18.00).

facilities,⁴¹ and ferret breeder facilities.⁴² The following is an example of the regulations applicable to a dog breeding facility:

HOUSING REQUIREMENTS FOR DOG BREEDING FACILITIES

f. Spatial Requirements.

- (1) Temporary primary enclosures will have a minimum length equal to the length of dog from the tip of its nose to the base of its tail and shall allow a minimum clearance in height at the shoulders of 3 inches, while the dog is standing normally and permit the dog to turn around and lie down. The primary enclosures with these dimensions are to be used only when the dog is sleeping or eating, when the run or exercise areas are being cleaned, during behavior modification, or when the caretaker is absent from the facility for a period of less than 10 hours. These primary enclosures are not to be used for exercise or socialization areas. Primary enclosures with these dimensions will be used to house one dog only at any given time. Confinement in an enclosure of this size shall not exceed 18 hours per day.
- (2) Permanent primary enclosures which are used for housing other than when the dog is sleeping or eating, or when the exercise areas are being cleaned, and which do not have access to a run or exercise area shall be larger to allow the dogs additional space. Minimum space standards (measured from the outside of the enclosure or by using the manufacturer's published list of measurements):

Size of Dog	Min. Space	Height
Extra Small (< 10 inches high)	4.5 sq. ft.	18 in.
Small (< 16 inches high)	6 sq. ft.	18-24 in.
Medium (< 22 inches high)	9 sq. ft.	24-33 in.
Large (< 26 inches high)	12 sq. ft.	33-39 in.
Extra Large (< 30 inches high)	16 sq. ft.	39-45 in.
Giant (any dog > 30 inches high)	20 sq. ft.	45-48 in.

If more than one dog occupies these primary enclosures, space will be figured for the first dog, with each additional dog needing one-half of the minimum space required.

2. **IWA.** Code Chapter 162 provides a general standard of care, requiring a pound, research facility, animal shelter, pet shop, boarding kennel, commercial kennel, commercial breeder, public auction, or dealer to adequately house, feed, or water dogs, cats, or vertebrate animals kept by an establishment.⁴³ DALs' rules also provide general standards of care applicable to all establishments where regulated animals are kept, including by providing temperature, ventilation, lighting, sanitation, and enclosure space,⁴⁴ but do not have the kind of detailed specification provided in the PACFA. Special requirements are established for

⁴¹ 8 CCR 1201-11(19.00).

⁴² 8 CCR 1201-11(19.00).

⁴³ Iowa Code § 162.13.

⁴⁴ Iowa Administrative Code 21 ch. 67.2(1).

in-home kennels.⁴⁵ Other special requirements apply to carriers, so-called dog day cares, and foster care homes.⁴⁶ The following is an example of the regulations applicable to a dog breeding establishment:

67.2(1) Housing facilities.

- a. Buildings shall be of adequate structure and maintained in good repair so as to ensure protection of animals from injury.
- b. Shelter shall be provided to allow access to shade from direct sunlight and regress from exposure to rain or snow. Heat, insulation, or bedding adequate to provide comfort shall be provided when the atmospheric temperature is below 50Å° F. or that temperature to which the particular animals are acclimated. Indoor housing facilities shall be provided for dogs and cats under the age of eight weeks and for dogs and cats within two weeks of whelping.
- c. Indoor and outdoor housing facilities shall at all times be provided with ventilation by means of doors, windows, vents, air conditioning or direct flow of fresh air that is adequate to provide for the good health and comfort of the animals. Such ventilation shall be environmentally provided as to minimize drafts, moisture condensation, odors or stagnant vapors of excreta.
- d. Ample lighting shall be provided by natural or artificial means or both during sunrise to sunset hours to allow efficient cleaning of the facilities and routine inspection of the facilities and animals contained therein.
- e. Ceilings, walls and floors shall be so constructed as to lend themselves to efficient cleaning and sanitizing. Such surfaces shall be kept in good repair and maintained so that they are substantially impervious to moisture. Floors and walls to a height of four feet shall have finished surfaces.
- f. Food supplies and bedding materials shall be stored so as to adequately protect them from contamination or infestation by vermin or other factors which would render the food or bedding unclean. Separate storage facilities shall be maintained for cleaning and sanitizing equipment and supplies.

The departmental rules also provide general standards of care for all regulated animals kept in establishments, including the provision of adequate feed and adequate water, and veterinary care.⁴⁷ For example, regulated animals must be removed from their primary enclosures at least twice in each 24-hour period and exercised, unless the primary enclosure is of sufficient size to provide this exercise.⁴⁸

F. Licensure

1. **PACFA.** Article 35-80 requires that a person operating a pet animal facility must be licensed by Colorado's Department of Agriculture, regardless of whether the person is also federally licensed.⁴⁹ The Article authorizes the department to establish different classifications of licenses by rule.⁵⁰ Each location operated by the person must be separately licensed.⁵¹ A license is subject to annual renewal.⁵² The exact amount of the license fee is determined by the department after calculating the actual cost of administering and enforcing the Article.⁵³

⁴⁵ Iowa Administrative Code 21 ch. 67.2(2).

⁴⁶ For carriers, see Iowa Administrative Code 21 ch. 67.4, for dog day cares, see Iowa Administrative Code 21 ch. 67.11, and for foster care homes, see Iowa Administrative Code 21 ch. 67.12. No express statutory provisions apply to these establishments.

⁴⁷ See Iowa Code §§ 162(1)(2), 162.13. See also Iowa Administrative Code 21 ch. 67.3(1), (3).

⁴⁸ Iowa Administrative Code 21 ch. 67.2(2)(f).

⁴⁹ Colo. Rev. Stat. § 35-80-104.

⁵⁰ Colo. Rev. Stat. § 35-80-109(2)(e).

⁵¹ Colo. Rev. Stat. § 35-80-105(2).

⁵² Colo. Rev. Stat. §§ 35-80-105(2), 35-80-106.

⁵³ Colo. Rev. Stat. § 35-80-109(2)(e)(l).

However, a licensee fee cannot exceed \$350.⁵⁴ The amount of fees are established by rule⁵⁵ as follows:

COLORADO LICENSE FEES

Person	Amount
Pet Retail/Wholesale	\$280
Aquarium Only	\$225
Pet Boarding/Training	\$280
Network Pet Boarding Facility	\$180
Pet Handler	\$80
Pet Grooming	\$225
Pet Animal Shelter	\$280
Dog Breeder Small Scale Operation ⁵⁶	\$250
Dog Breeder Large Scale Operation	\$280
Cat Breeder	\$225
Common Bird Breeder	\$80
Uncommon Bird Breeder	\$180
Small Animal Breeder	\$250
Pet Animal Rescue	\$80

2. **IWA.** Code Chapter 162 requires that a person operating as a boarding kennel or commercial kennel, commercial breeder, dealer, public auction, or pet shop be issued a state license. Code Chapter 162 also provides for registration in lieu of licensure based on either status or federal licensure. A license or certificate of registration terminates one year after date of issuance.⁵⁷

A pound, animal shelter, or research facility operates pursuant to a certificate of registration rather than a license. A commercial kennel, public auction, dealer, or

⁵⁴ Colo. Rev. Stat. § 35-80-105(4).

⁵⁵ 8 CCR 1201-11(4.00)(D). An animal shelter may petition for an exemption under 8 CCR 1201-11(4.00)(C).

⁵⁶ Note, a "dog breeder, small scale operation" is defined as a dog breeder that transfers at least 25 but not more than 99 dogs per year. See Colo. Rev. Stat. § 35-80-102(6.6).

⁵⁷ Iowa Code §§ 162.3 (certificate of registration for pounds), 162.4 (certificate of registration for animal shelters), 162.5 (licenses for pet shops), 162.6 (licenses or certificates of registration for commercial kennels or public auctions), 162.7 (licenses or certificates of registration for dealers), 162.8 (licenses or certificates of registration for commercial breeders), 162.9 (licenses for boarding kennels), 162.10 (certificates of registration for research facilities).

commercial breeder is exempt from state licensure requirements if they are issued a federal license.⁵⁸ Once a person obtains a federal license, DALs' issuance of a certificate of registration appears pro forma. The fees for licensure and certification are established by statute.⁵⁹

IOWA LICENSE AND CERTIFICATE OF REGISTRATION FEES

Person		Amount	
		License	Certificate of Registration
Pounds	Public	-----	\$0
	Private That Does Not Sell Dogs or Cats	-----	\$0
	Private That Does Sell Dogs or Cats	-----	\$15
Animal Shelter		-----	\$0
Pet Shop		\$50	-----
Commercial Kennel		\$40	\$20
Public Auction		\$40	\$20
Dealer		\$100	\$20
Commercial Breeder		\$40	\$20
Boarding Kennel		\$30	-----
Research Facility		-----	\$0

G. Inspection and Investigation

1. **PACFA.** Article 35-80 authorizes the Colorado Department of Agriculture to inspect a pet animal facility during regular business hours, but only upon consent or obtaining an administrative search warrant.⁶⁰ The department may inspect premises of the facility and records required to be kept as part of the operation.⁶¹ A pet animal facility is required to maintain records for a two-year period at the facility's location.⁶² A facility may be inspected upon application and as a routine matter after that, or upon complaint if determined appropriate by the department.⁶³ The department's authority extends to inspecting a facility after the

⁵⁸ Iowa Code §§ 162.6 (licenses or certificates of registration for commercial kennels or public auctions), 162.7 (licenses or certificates of registration for dealers), 162.8 (licenses or certificates of registration for commercial breeders). Note Iowa Code § 162.7 erroneously refers to dealers as kennels. A person obtains a certificate of registration if the person has been issued a federal license as a dealer or exhibitor. See 7 U.S.C. § 2133.

⁵⁹ Iowa Code §§ 162.3 (certificates of registration for a pound), 162.4 (certificates of registration for animal shelters), 162.5 (licenses for pet shops), 162.6 (licenses or certificates of registration for commercial kennels and public auctions), 162.7 (licenses or certificates of registration for dealers), 162.8 (licenses or certificates of registration for commercial breeders), Iowa Code § 162.9 (licenses for boarding kennels), and 162.10 (certificates of registration for research facilities).

⁶⁰ Colo. Rev. Stat. § 35-80-110(3).

⁶¹ Colo. Rev. Stat. § 35-80-110(3).

⁶² Colo. Rev. Stat. § 35-80-107.

⁶³ 8 CCR 1201-11(10.00)(A).

denial, suspension, or revocation of a license.⁶⁴ Note, a person who operates a facility that is licensed by the United States Department of Agriculture as of December 31, 1993, is not subject to a routine state inspection.⁶⁵

The department, upon its own or upon complaint, may investigate any pet animal facility.⁶⁶ A complaint and the results of an investigation may, in the department's discretion, be closed to the public during the investigation and until the case is either dismissed or the enforcement action is taken, or upon the issuance of a court order.⁶⁷

2. **IWA.** Neither Code Chapter 162 nor DALs rules provides a detailed scheme for inspections or investigations by DALs. The chapter provides that the premises of each licensee or certificate holder shall be open for inspection during normal business hours.⁶⁸ By rule, DALs may inspect the premises, housing facilities, and records of establishments during normal business hours.⁶⁹

H. Enforcement

1. **PACFA.** Article 35-80 expressly authorizes the Colorado Department of Agriculture to enforce the provisions of the Article.⁷⁰ The department may cooperate with the USDA in carrying out the provisions of the Article.⁷¹ The department's enforcement authority includes issuing cease and desist orders against persons whom the department has reasonable cause to believe have violated the Article, and may bring suit in court to compel compliance.⁷² The department may also petition a court for equitable relief, including a temporary or permanent injunction.⁷³ There is no specific provision providing for the seizure of pet animals.

The department may also take administrative action against a license, including by denying, suspending, refusing to renew, restricting, or revoking a license. Grounds for administrative action include refusal to comply with the Article, a conviction for cruelty to animals, the denial, suspension, or revocation of an equivalent license, the refusal to provide relevant information to the department, or the falsification of information requested by the department.⁷⁴ The department may refuse to renew a license issued to a person who has not paid a civil penalty for a violation.⁷⁵ In addition, a person whose license was revoked is prohibited from applying for a new license for two years.⁷⁶

2. **IWA.** DALs controls licensing and certification and appears to supervise an animal warden, as appointed by the state or a political subdivision, who is responsible for "aiding" in the enforcement of the chapter or any other law or ordinance relating to the licensing, control, or seizure and impoundment of

⁶⁴ Colo. Rev. Stat. § 35-80-110(3.5).

⁶⁵ Colo. Rev. Stat. § 35-80-103(1).

⁶⁶ Colo. Rev. Stat. § 35-80-110(1).

⁶⁷ Colo. Rev. Stat. § 35-80-110(2).

⁶⁸ See Iowa Code § 162.12.

⁶⁹ Iowa Administrative Code 21 ch. 67.7(3).

⁷⁰ Colo. Rev. Stat. § 35-80-111(1).

⁷¹ Colo. Rev. Stat. § 35-80-109(5).

⁷² Colo. Rev. Stat. § 35-80-111(2).

⁷³ Colo. Rev. Stat. § 35-80-111(3).

⁷⁴ Colo. Rev. Stat. § 35-80-112(1).

⁷⁵ Colo. Rev. Stat. § 35-80-113(3)(b).

⁷⁶ Colo. Rev. Stat. § 35-80-112(3).

regulated animals.⁷⁷ The chapter provides for the seizure, impoundment, and disposition of a regulated animal due to neglect, and specifically when such animal has been deprived of adequate food, water, or shelter.⁷⁸ Moreover, the chapter provides that DALS may adopt rules for the seizure, impoundment, and disposition (e.g., by sale or destruction) of a regulated animal suffering from neglect."⁷⁹ By rule, DALS may seize and impound a regulated animal upon petition to district court or upon its own order subject to a contested case proceeding.⁸⁰ In lieu of seizure and impoundment, the department may authorize a "one-time dispersal" of animals, including by sale.⁸¹

DALS may also take administrative action against a license or certificate holder. The department may deny a license or certificate or registration to any pound or animal shelter and the department may deny a license or certificate of registration to an establishment.⁸² Grounds for administrative action are broader than for seizure. After a "public hearing," DALS must determine that the establishment's housing facilities or primary enclosures are inadequate, or its feeding, watering, cleaning, and housing practices are not in compliance with the chapter.⁸³ The chapter does not authorize DALS to suspend a license or certificate of registration, but it does provide that DALS may revoke an existing license or certificate of registration after a public hearing based on the same grounds as a denial. Note, there appears to be a conflict in reading Code Sections 162.11 and 162.12 together. As earlier discussed, once a person has been issued a certificate of registration, the person is no longer subject to state regulation under the Code chapter so long as the federal license remains valid:

*Other than obtaining the certificate of registration from the secretary [of agriculture], any dealer or commercial breeder and any person who operates a commercial kennel or public auction shall not be subject to further regulation under the provisions of this chapter.*⁸⁴

However, Code Section 162.12 provides DALS may deny an application for a license or certificate of registration to "any public auction, boarding kennel, commercial kennel, research facility, pet shop, commercial breeder, or dealer" [emphasis added].⁸⁵ As a matter of practice, DALS does not regulate or inspect a person who has been issued a federal license and state certificate of registration in lieu of a state license.⁸⁶

If a person loses a state license due to revocation or because the person relinquished it while a revocation action is pending, the person is barred from obtaining a new license for at least three years from the date of the loss, unless DALS waives the waiting period.⁸⁷ Moreover, the bar is for five years if a court

⁷⁷ Iowa Code §§ 162.2(4), 162.14.

⁷⁸ Iowa Code § 162.13.

⁷⁹ Iowa Code § 162.13.

⁸⁰ Iowa Administrative Code 21 ch. 67.7(4)(d).

⁸¹ Iowa Administrative Code 21 ch. 67.7(4)(h).

⁸² Iowa Code §§ 162.3 (certificates of registration for a pound), 162.4 (certificates of registration for animal shelters), 162.5 (licenses for pet shops), 162.6 (licenses or certificates of registration for commercial kennels and public auctions), 162.7 (licenses or certificates of registration for dealers), 162.8 (licenses or certificates of registration for commercial breeders), 162.9 (licenses for boarding kennels), and 162.10 (certificates of registration for research facilities).

⁸³ Iowa Code § 162.12. The term "public hearing" is assumed to mean a contested case proceeding under Code Chapter 17A.

⁸⁴ Iowa Code § 162.11(2).

⁸⁵ Iowa Code § 162.12.

⁸⁶ Iowa Administrative Code 21 ch. 67.8.

⁸⁷ Iowa Administrative Code 21 ch. 67.10(1).

determines that the person committed an act of animal cruelty or neglect.⁸⁸ The three-year or five-year prohibition extends to any establishment in which the person has a "substantial interest."⁸⁹ A person who loses the state license must file a plan with DALs detailing how the person will dispose of the regulated animals.⁹⁰ The rule does not apparently apply to persons issued a certificate of registration, either as a pound, animal shelter, or research facility or as a commercial kennel, public auction, dealer, or commercial breeder who is issued a federal license.

I. Penalties

1. **PACFA.** Article 35-80 provides for both civil and criminal penalties for violations of its provisions. The civil penalties are assessed by the Colorado Department of Agriculture and cannot exceed \$1,000 per violation.⁹¹ The department is authorized to recover the amount of the assessed civil penalties in court together with costs and attorney fees.⁹² A person may also be subject to criminal penalties, and, specifically, a "class 2 misdemeanor", punishable by a minimum of three months imprisonment or \$250 fine or both and a maximum of 12 months imprisonment or \$1,000 fine or both.⁹³ The crimes include operating a facility without a valid license, refusing to comply with a cease and desist order, impersonating an inspector, or altering or falsifying a certificate of veterinary inspection or certificate of veterinary health.
2. **IWA.** Code Chapter 162 provides only criminal penalties for violations of its provisions. A person who operates an establishment without a valid license or certificate of registration is guilty of a simple misdemeanor and a person who fails to comply with minimum standards of care justifying a seizure (to adequately house, feed, or regulate animals) is subject to the same penalty.⁹⁴ A simple misdemeanor is punishable by confinement for no more than 30 days or a fine of at least \$65 but not more than \$625 and confinement for not more than 30 days in jail or both.⁹⁵ A dealer who knowingly ships a diseased animal is subject to a fine not to exceed \$100.⁹⁶

J. Financing

1. **PACFA.** The Article provides that the Colorado Department of Agriculture administers PACFA by fees and civil penalties required to be deposited into the Pet Animal Care and Facility Fund.⁹⁷ The Colorado General Assembly is responsible for making annual appropriations from the fund to the Department of Agriculture for direct and indirect expenses associated with administering or enforcing the program.⁹⁸

⁸⁸ Iowa Administrative Code 21 ch. 67.10(1).

⁸⁹ Iowa Administrative Code 21 ch. 67.10(1).

⁹⁰ Iowa Administrative Code 21 ch. 67.10(2).

⁹¹ Colo. Rev. Stat. § 35-80-113(1).

⁹² Colo. Rev. Stat. § 35-80-113(3)(a).

⁹³ Colo. Rev. Stat. §§ 35-80-114, 18-1.3-501(1)(a).

⁹⁴ Iowa Code § 162.13.

⁹⁵ Iowa Code § 903.1(a).

⁹⁶ Iowa Code § 162.13.

⁹⁷ Colo. Rev. Stat. § 35-80-116. The section requires that interest derived from the deposit and investment of this fund credited to the state's general fund. Note, the section actually refers to carrying out the purposes of the "section", but "article" is assumed.

⁹⁸ Colo. Rev. Stat. § 35-80-116. The section actually refers to carrying out the purposes of the "section", but "article" is assumed.

2. **IWA.** Code Chapter 162 requires that fees from licenses and certificates of registration issued by DALS are deposited in the General Fund of the State.⁹⁹

III. Conclusion

For materials considered by the Committee see the Additional Information link on the Committee's Website, <http://www.legis.state.ia.us/aspx/Committees/Committee.aspx?id=486>. The materials include a background memorandum prepared by Doug Adkisson regarding the federal Animal Welfare Act and Code Chapter 162, including licensing and registration requirements.

0929RR

⁹⁹ Iowa Code § 162.18.